IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Appeal No. 1032 of 2001
(Old No. 288 of 1982)

State through Executive Officer
Cantonment Board, Lansdowne,
Garhwal ... Appellant

Vs

Shri Dan Singh Bisht,
S/o Shri Dharam Singh Bisht
R/o Sadar Bazar, Lansdowne
District Garhwal ... Respondent

Sri Rajendra Dobhal, learned counsel for the appellant
Sri Anil Dabral, learned counsel for the respondent

Hon'ble B.C. Kandpal, J.

This appeal has been preferred against the judgment and order dated 18.01.1980 in Case No. 227 of 1979 thereby acquitting the respondent – Dan Singh Bisht for the charges leveled against him under Section 213 of the Cantonment Act, 1924.

2. Brief facts of the prosecution case are that a complaint was filed by the Cantonment Board against the respondent stating therein that the respondent was operating a machine for ginning the cotton without obtaining any licence which is violation of Section 213 of the Cantonment Act, 1924.

3. The case of the respondent was tried by the Judicial Magistrate and after having considered the material available on the record, the Judicial Magistrate acquitted the respondent for the charges under Section 213 of the Cantonments Act, 1924 vide impugned judgment and order dated 18.01.1980.

4. Feeling aggrieved by the aforesaid impugned judgment and order, the Cantonment Board filed the appeal against the acquittal of the respondent.

5. Heard Sri Rajendra Dobhal, learned counsel for the appellant, Sri Anil Dabral, learned counsel for the respondent and perused the record.

6. The material available on record shows that it was the case of the complainant/appellant that the permission to run the ginning machine was necessary, in view of the provisions of Section 210 of the Cantonment Act.

7. It would be relevant to quote the Section 210 of the Cantonment Act, 1924 for deciding the controversy in this case. Section 210 of the Cantonment Act, 1924 reads as under:-

"210 Licence required for carrying on of certain occupations:-

(1) No person of any of the following classes, namely:-

a) butchers and vendors of poultry, game or fish;

b) persons keeping pigs for profit and dealers in the flesh of pigs which have been slaughtered in India;

c) persons keeping milch cattle or milch goats for profit;

d) persons keeping for profit any animalS other than pigs, milch, cattle or milch goats;

e) dairymen, buttermen and markers and vendors of ghee;

f) makers of bread biscuits or case, and vendors of bread, biscuits or cake made in India;

g) vendors of fruits or vegetable;

h) manufacturers of aerated or other potable waters or of ice or ice-cream, and vendors of the same;

i) vendors of any medicines, drugs or articles of food or drink for human consumption (other than the flesh of pigs, milk, butter, bread, biscuits, cake, fruit, vegetables aerated or other potable waters or ice or ice-cream) which are of a perishable nature;

ia) vendors of spirituous liquor

j) vendors of water to be used for drinking purposes;

k) washermen

l) dealers in hay, straw, wood, charcoal or other inflammable material;

m) dealers in fire-works, kerosene oil, petroleum or any other inflammable oil or spirit;

n) tanners and dyers;

o) persons carrying on any trade or occupation from which offensive or unwholesome smells arise;

p) vendors of wheat, rice and other grain or of flour

q) makers and vendors of sugar or sweetmeats

r) barbers and keepers of shaving saloons;

s) any other persons carrying on such other trade, calling or occupation as the Central Government may, by notification in the official Gazette, specify in this behalf;

shall carry on his trade, calling or occupation in any part of a cantonment unless he has applied for and obtained a licence in this behalf from the Board.

2) A licence granted under Sub-section (1) shall be valid [until the end of year in which it is issued] and the grand of such licence shall not be withheld by the Board unless it has reason to believe that the business which it is intended to establish or maintain would be offensive or dangerous to the public [or that premises in which the

business in intended to be established or maintained (are unfit or unsuitable) for the purpose]

3) Notwithstanding anything contained in sub-section(1)

a) no person who was, at the commencement of this Act, carrying on his trade, calling or occupation in any part of a cantonment shall be bound to apply for a licence for carrying on such trade or occupation in that part until he has received from the Board not less than three months' notice in writing of his obligation to do so, and if the Board refuses to grant him a licence, it shall pay compensation for any loss incurred by reason of such refusal;

b) no person shall be required to take out a licence for the sale or storage of petroleum or for the sale or possession for sale of poisons or white arsenic in any case in which he is required to take out a licence for such sale, storage or possession for sale by or under the [petroleum Act, 1934 (30 of 1934)] or the Poisons Act, 1919 (12 of 1919).

4) The (Board) may charge for the grant of licence, under this section[such reasonable fees] as it may fix with the previous sanction of the [Central Government]."

8. It is thus clear that it is essential to obtain the permission for running any business in the cantonment area for which the permission is to be taken under Section 210 of the Cantonment Act, 1924 but for running the ginning machine, the permission under Section 210 is not required. The provisions of Section 210 of the Cantonment Act are not applicable in this case. Therefore, the trial court has rightly observed that it was not incumbent on the part of the

respondent to obtain the licence for running the ginning machine.

9. I do not find any perversity in the impugned judgment and order passed by the trial court. The evidence adduced before the trial court have correctly assessed before passing the impugned order.

10. I do not find any ground for interference in the impugned judgment and order dated 18.01.1980 passed by the trial court thereby acquitting the respondent.

11. Therefore, the appeal lacks merit and is liable to be dismissed.

12. Accordingly, the appeal is dismissed.

(B.C. Kandpal, J.)

26.07.2006
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